

Case No. 9092and 9093

On September 4, 2009, the Circuit Court for Baltimore City issued a decision (Case No. 24-C-08-008519) in the appeals by PEPCO and Delmarva from the rate case decisions in PSC Cases No. 9092 and 9093 respectively. Since no further appeals have been noted, this is a final decision in these cases.

PEPCO and Delmarva raised three issues on appeal:

- 1) That the Commission erred in disallowing the reallocation of Service Company costs incurred for discontinued subsidiaries;
- 2) That the Commission erred in approving temporary rates following the expiration of the statutory period for suspension of rates; and
- 3) That the Commission erred in ordering the Companies' shareholders to pay the cost of a management audit.

OPC supported the position of the Commission on all three issues. The Court's decision concurred with OPC's position on two of the three issues on appeal.

More specifically, on the issue of reallocation of Service Company costs, the Court agreed with OPC that the Companies failed to establish that Service Company costs did not decline as a result of the divestiture of the subsidiaries, because the evidence produced by the Companies was "conclusory." The Court also specifically credited OPC's contention on this issue. "As argued by People's Counsel, the Companies could have adduced details of the cost structure that would demonstrate that the tasks to be performed by the Service Company remained unchanged in scope or magnitude despite the divestiture."

On the issue of temporary rates, the Court concurred with the position advanced by both the Commission and OPC that the Companies had waived this argument by abandoning their request for permanent rates before the Commission.

On the third issue, the Court disagreed with the position of the Commission and OPC, and held that there was no statutory authority for the Commission to order that the Companies' shareholders pay the cost of a management audit.